IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos. 25095 of 1999 & 476 of 2001

1) WRIT PETITION NO : 25095 of 1999

Between:

P.Kata Rao, son of P.Kataiah,
H.No. 1-6-249/6, Friends colony Zamistanpur, Hyderabad-48

..... PETITIONER

AND

1 The Managing Director,
State Bank of Hyderabad Head Office, Gunfoundry
Hyderabad
2 The General Manager (Operations),
State Bank of Hyderabad Head Office, Gunfoundry
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order more particularly one in the nature of writ of Mandamus calling for all the records pertaining to the order contained in IR 3324. dt: 6th August, 1999 passed by the 2nd respondent and declare the said order as illegal, arbitrary and violative of principles of Natural Justice and quash the same and consequently direct the respondent to pay the subsistence allowance at the rate calculated on the pay and allowance which would have got but for the disciplinary proceedings as officer in JM Scale 1 or such order rate as is applicable to me w.e.f. 1-8-94 till 2-7-99.

Counsel for the Petitioner: MR.A.SANJEEVA KUMAR

Counsel for the Respondents : MR.V.JOGAIAH SARMA

2)WRIT PETITION NO : 476 of 2001

P.Kata Rao, son of Kataiah,
H.No. 1-3-183/40/101 Flat No.7, Bharani
Avenue, SBI Colony, Gandhinagar main road,
Gandhinagar, Hyderabad.

..... PETITIONER

AND

1 The Managing Director,
State Bank of Hyderabad Head Office, Gunfoundry
Hyderabad
2 The Chief General Manager,
State Bank of Hyderabad, Gunfoundry
Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order more particularly one in the nature of writ of Certiorari calling for the records relating to the impugned proceedings No. DPD/381, dated 2.7.1999 on the file of the second respondent and confirmed in appeal vide proceedings No. PER/Gr.XI/7161, dated 2.2.2000 on the file of the first respondent and quash the same as they are illegal, arbitrary and violative of Article 14 of the Constitution of India apart from violative of principles of natural justice and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits including backwages and continuity of service.

Counsel for the Petitioner:MR.A.SANJEEV KUMAR

Counsel for the Respondents : MR.V.JOGAIAH SARMA

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

Writ Petition Nos. 25095 of 1999 & 476 of 2001

Common Order:

Heard Sri A.Sanjeeva Kumar, learned counsel for the petitioner and

Sri V.Jogaiah Sarma, learned counsel appearing on behalf of the respondents. Since both these cases arise out of the common and incidental proceedings, the same are being taken up together for disposal.

The petitioner, who has been working as Branch Manager at the relevant point of time, filed Writ Petition No.25095 of 1999 seeking a Writ of Mandamus challenging the orders dated 06.08.1999 passed by the second respondent therein rejecting the petitioner's claim for subsistence allowance for the period from 01.08.1994 to 02.07.1999 as bad, illegal and void.

In the other Writ Petition No.476 of 2001, the petitioner seeks to assail the orders dated 02.07.1999 passed by the second respondent therein dismissing the revision and as confirmed in appeal by the orders dated 02.02.2000 by the first respondent as bad, illegal and void.

The facts, which are not in dispute are that the petitioner, who belongs to scheduled caste community, was initially appointed with the respondents-bank on 17.12.1974 and after successful completion of service, he was promoted as Manager and posted as Branch Manager at the relevant point of time. On certain allegations, the petitioner was suspended by the respondents as per the order dated 13.08.1988 and this was followed by issuance of charge sheet on 08.10.1991. Thereafter, consequent upon an enquiry and report obtained therein, the petitioner was removed from service on 23.07.1994, against which, the petitioner filed an appeal, however, the same was also dismissed on 06.04.1995. In the mean while, the petitioner filed Writ Petition No. 16833 of 1994 and the same was allowed by this Court as per order dated 12.03.1999 with direction to reconsider the matter. Thereupon, the respondents issued a show cause notice on 01.06.1999 and having not satisfied with the

petitioner's case, once again orders of dismissal were passed on 02.07.1999. The appeal filed against the said orders was also dismissed on 02.02.2000. In the mean while, the petitioner unsuccessfully sought to challenge the same at the stage of show cause notice dated 01.06.1999 by way of Writ Petition No. 11745 of 1999, which was dismissed for default. The case of the petitioner is that in fact, he had filed several representations in the mean while pointing out his defence and for taking a lenient view. The very same case has also been referred to an enquiry and investigation by the C.B.I., which was taken as C.S. No. 3 of 1993 wherein the petitioner was acquitted. With these factual back ground in W.P. No.25095 of 1999, the petitioner claims that during the period from 01.08.1994 to 02.07.1999, no allowance has been paid to him and therefore, sought a direction for such payment.

Whereas in Writ Petition No.476 of 2001, challenge is made against the subsequent orders of dismissal dated 02.07.1999 and as confirmed in appeal on 02.02.2000.

Considering the submissions made from both the sides and on perusal of the material, the question which has to be considered is as to whether the impugned action of dismissal from service on the facts and circumstances is valid and justified, and whether the petitioner is entitled to suspension allowance for the period from 01.08.1994 to 02.07.1999 ?

There is no dispute to the aforesaid sequel of events as pointed out in regard to the service particulars as stated. There is no other allegation earlier except those in respect of which the present disciplinary action is sought to be made. Initially, the petitioner was suspended on 13.08.1988 and after issuance of charge sheet on 08.10.1991, he was removed from service on 23.07.1994. Though it was confirmed in appeal on 06.04.1995, this court set aside the said orders of removal in Writ Petition No.16833 of 1994 as per orders

dated 12.03.1999. It is only after issuance of show cause notice on 01.06.1999, once again orders have been passed on 02.07.1999. Apart from the observations as made by this court in the earlier orders dated 12.03.1999, there can not be any dispute that the petitioner, though under suspension all along, once the earlier orders of removal dated 23.07.1994 having been set aside, would be entitled to payment of subsistence allowance till the final orders are passed once again. In this case, orders are passed on 02.07.1999 and therefore, there is no justification for withholding any allowance to which the petitioner is entitled to under law. In view of the above, the second point is answered in affirmative in favour of the petitioner.

Coming to the question as to the correctness of the dismissal order, it is relevant here to take note of the directions given by this Court in Writ Petition No.16833 of 1994 wherein the entire disciplinary enquiry was under challenge on the ground that the same was *ex parte*. After considering all the aspects including the charges made against him, it was held that though the petitioner was furnished with a copy of Enquiry Officer's report, there was no preliminary enquiry, and considering the extent of punishment which has to be imposed in the exigency of circumstances, it was held that to the extent of imposing punishment, the orders of the disciplinary authority and the appellate authority are vitiated since certain aspects in regard to the reduction of punishment was not taken into account which has resulted causing prejudice to the petitioner. Therefore, both the said orders dated 23.07.1994 and 06.04.1995 were set aside the extent of punishment imposed by taking into account the earlier punishment dated 01.12.1988. While holding so, the disciplinary authority was directed to issue show cause notice to the petitioner by indicating the modified punishment proposed in the earlier proceedings of appeal. In spite of the same, there is reiteration of very same punishment under show cause notice dated 01.06.1999 and the same stood confirmed in the orders dated 02.07.1999, ultimately upholding in appeal as per order dated 02.02.2000. On a reading of both the

orders dated 02.07.1999 and 02.02.2000, it is quite amply clear that the tenor on which the directions proceeded and the ultimate direction as given in the earlier orders by this Court in Writ Petition No. 16833 of 1994 having not been properly kept in view nor followed from a proper perspective. The said orders can in no way be considered to be a reason as such for a *de novo* consideration on the aspect of punishment and it is also to be noticed that reconsideration is only in respect of punishment and that too based on the earlier recommendations made in appeal. Therefore, necessarily it follows that the order of dismissal as was imposed earlier on 23.07.1994 could not possibly be repeated or restated much less reimposed. Necessarily it has to be any other punishment other than the order of dismissal or removal. Further, the specific direction is only to take a follow up action in terms of the directions given in the appeal on the earlier occasion. Thus, on a conspectus reading of the said directions, the only scope left for reconsideration is to once again take into consideration the earlier directions given in appeal and not otherwise, or to impose any other punishment much less dismissal order. Having regard to the aforesaid circumstances and also even taking into account totality of the circumstances vis-à-vis the allegations as made against him and also the clear acquittal of the petitioner on criminal side though it may not be binding, necessarily the respondents had to follow the earlier orders of this Court, since the same are not kept in view and the impugned orders are not in terms of the said order. Hence, the matter requires to be reconsidered afresh by the authorities. In the circumstances, it has to be held that the impugned orders of the respondents in dismissing the petitioner from service are not only contrary to the directions given by this Court on 12.03.1999 in W.P. No. 16833 of 1994, but also do not in any way commensurate to the gravity of the allegations as made or found against him.

In the circumstances, both the Writ Petitions are allowed setting aside

both the orders of respondents dated 02.07.1999 and 02.02.2000 and directing fresh consideration and disposal of the matter in accordance with law after giving notice and opportunity to the petitioner. The respondents are also directed to pay subsistence allowance and all such other allowances to which the petitioner is entitled during the period of his suspension from 01.08.1994 to 02.07.1999. No costs.

(B.Prakash Rao, J.)

07.02.2005

DRK

That Rule Nisi have been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice

On Monday the seventh day of February Two thousand and five.

…. Registrar

Copy to:

1 The Managing Director, State Bank of Hyderabad Head Office, Gunfoundry Hyderabad

2 The General Manager (Operations), State Bank of Hyderabad Head Office, Gunfoundry, Hyderabad

3 Two CD copies.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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07.02.2005